

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE
CRIMINAL APPEAL NO.591 OF 2001
SIDE

1. Balu alias Pandurang Ramchandra
Landage

2. Sou.Anjana Pandurang Landage

3. Sou.Droupada Pandurang Landage .. Appellants

versus

The State of Maharashtra .. Respondent

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Mr.Satish Maneshinde i/b Mr.S.D.Nangre for the
Appellants.

Mr.P.S.Hingorani A.P.P. for Respondent

CORAM : SMT.RANJANA DESAI AND
D.G.KARNIK, JJ

JUDGMENT RESERVED ON: 2nd May, 2006
JUDGMENT PRONOUNCED ON: 5th May, 2006

ORAL JUDGMENT (Per D.G.Karnik, J)

1. This appeal by the original accused nos. 1 to
3 and order dated 21st June, 2001 of the learned
Additional Sessions Judge, Sangli and their
conviction under section 302 read with section 34

of the Indian penal Code and the sentence of life imprisonment with fine of Rs.2000/- each in default of payment of fine the appellants are ordered to suffer rigorous imprisonment for one month each.

The prosecution case is as under :

2. Vilas Landge (hereinafter referred to as the deceased) was the brother Balu alias Pandurang Landge (hereinafter referred to as the accused no.1). Accused nos. 2 and 3 are the two wives of the accused no.1. The deceased and the accused were living in their fields in adjoining houses. Sometimes there were quarrels between the deceased and the accused no.1 on account of partition of the field. On 14th May, 2000 in the morning the deceased and his wife Kamal had been to the village and returned home around 12.30 to noon. Their daughter Suvarna told the deceased that while he was away she was beaten by the accused no.1. Suvarna further told the deceased that the accused no. 1 was dancing on the roof of the house and on her asking the accused no. 1 as to why he was so doing, he removed roof tiles entered the house and assaulted her. On hearing this, the deceased went for inquiring with the accused no.1 as to why he

had assaulted Suvarna. There was heated exchange of words between them. Kamal, the wife of the deceased intervened. At that time, the accused no.1 took an axe and gave a blow on the right hand of Kamal. Accused nos. 2 and 3 then pulled held and pulled down the deceased. Accused no.1 gave three axe blows to the deceased. Kamal and Rupali, her brother's daughter who had come to their house, made a commotion. Hearing their shouts Tanaji and Ananda, the cousin brothers of the deceased, as also some villagers gathered. The villagers brought a jeep and took the deceased to hospital for treatment. However, the deceased ultimately succumbed to the injuries. Autopsy was performed on the next day. The doctor conducting the post mortem certified that the deceased had died due to haemorrhagic shock due to injuries specified in the post mortem report.

3. Soon after the assault the police went to the hospital and recorded a statement of the deceased in the same evening. The police thereafter carried out the investigation and arrested the accused who were charged for commission of offence of murder of the deceased and grievous hurt to his wife Kamal. The accused pleaded not guilty and were tried. The

learned Sessions Judge after marshalling the evidence adduced before him held that the charge of murder were proved and convicted the accused under section 302 read with 34 of I.P.C. He also held that the accused had caused simple hurt to Kamal and convicted them under section 323 r/w 34 of I.P.C.

4. The prosecution examined two eye witnesses viz Kamal Vilas Landge (PW 4) the widow of the deceased and Rupali Malappa Nangare (PW 5) the minor daughter of the brother of Kamal. In her deposition, Kamal has narrated that on 14th May, 2000 she and her husband returned home from the village between 12.30 and 1 noon. Their daughter Suvarna then told the deceased that she was beaten by the accused no.1 on being asked by her as to why he was dancing over the roof of their house. The deceased went out for inquiring with the accused no.1 as to why he had assaulted his daughter. There was a quarrel. Kamal intervened between them. The accused no.1 took an axe. He first gave a blow on the right hand of Kamal. Then the two wives of the accused no. 1 namely accused nos. 2 and 3 pulled down the deceased on the ground and the accused no. 1 gave axe blows to the deceased.

On shouts being raised Mohan Mali came to the spot. Ananda Shamrao Landage and Tanaji Shamrao Landage, the cousin brothers of the deceased also came. Thereafter, the deceased was shifted to the hospital. The police followed them and recorded the statement of the deceased as well as the witnesses. In the cross-examination, attention of Kamal Vilas Landage (PW 4) was drawn to some minor omissions in her statement before the police. She stated that she could not assign any reason as to why there was no reference in her statement before the police that her daughter Suvarna had asked accused no. 1 why he was dancing over the roof of the house of the deceased. Similarly, she also stated that she could not assign any reason there was no reference in her statement before the police of the blow given by the accused on her hand. At this stage, it may be noted that presence of Kamal on the spot of the incident was not disputed before us by the counsel for the appellants-accused. So the omission to mention the blow given on the hand of Kamal is not of much relevance so far as the conviction of the accused for murder is concerned. The omission may be relevant so far as the charge of grievous hurt caused to Kamal is concerned, which we shall consider separately. Nothing else

was pointed to us from the cross-examination of Kamal (PW 4) to doubt the veracity of her statement that the accused no.1 gave axe blows on her husband, on account of which he ultimately died.

5. The prosecution also examined Roopali Malappa Nangre (PW 5), the daughter of the brother of Kamal. She was 11 years old at the time of the incident and had completed 12 years of age when her deposition was recorded in the Court. Her deposition was recorded by the learned Sessions Judge in the form of question and answer. She stated that she had gone to her aunt when there was a quarrel between the deceased and his brother. When asked what she meant by quarrel, she stated that the deceased was beaten by the accused no.1 with an axe. She also stated that her aunt received injury on right hand and left cheek and maternal uncle (the deceased) received injury to his left shoulder. She gave time of the incident as about 1 noon. In the cross-examination, nothing of substance was brought out. Her evidence is not shaken at all by the cross-examination.

6. The evidence of the two eye witnesses is consistent with each other. Their presence on the

scene of the offence is not doubted. They saw accused no. 1 assaulting the deceased with an axe. The post mortem report shows three incised wounds on the body of the deceased. The post mortem report further says that the deceased died due to haemorrhagic shock arising out of the said injuries. Dhondiram Jadhav, the doctor who conducted the post mortem was examined as PW 10. He proved the post mortem report. He denied the suggestion that death could have been avoided if the deceased was treated immediately. There is thus no doubt that the deceased died because of the injuries suffered by him on account of the axe blows inflicted by accused no.1.

7. The prosecution also examined Tanaji Shamrao Landage (PW 6) and Ananda Shamrao Landage (PW 7) the two cousin brothers of the deceased who had come on the spot and removed the deceased to the hospital. Tanaji Shamrao Landage (PW 6) has stated that there was no talk between him and the deceased except that the deceased told him that there was heavy bleeding and he should be removed to the hospital. Ananda Shamrao Landage (PW 7) however has stated that he inquired with the deceased as to how he received injuries. He further stated that

the deceased told him that the accused no.1 had assaulted him and his wife with an axe. In view of the fact that there are two eye witnesses each of whom has seen the accused no. 1 assaulting the deceased with an axe it is not necessary to rely upon the statement allegedly made by the deceased to Ananda Shamrao Landage (PW 7) that he was assaulted by the accused no.1. In our view, conviction of accused can be sustained even without reference to this statement.

8. Soon after the happening of the incident the police followed the deceased to the hospital and recorded his statement which was regarded as complaint/first information report. It is at Exhibit 28. In the statement (Ex.28) the deceased has stated that when he came back from the village to his house his daughter Suvarna told him that she was beaten by the accused no.1 ; so he went to inquire why the accused no.1 had beaten her. At that time, there was a quarrel. The accused no.1 brought an axe from the house. Accused no.1 gave a blow with the axe to the wife of the deceased. The deceased intervened. The accused nos. 2 and 3 caught the deceased who fell down. Thereafter, the accused no.1 assaulted the deceased with the axe on

the left shoulder and below it with the axe and he sustained injuries. This account of the incident found in the first information report corroborates the evidence of the two eye witnesses Kamal Landage (PW 4) and Rupali Nangre (PW 5).

9. The prosecution also examined Ashok Nivrutti Mane (PW 2) who acted as a panch witness for discovery of the axe. On 19th May, 2000 the accused no.1 made a statement before the police and the two panchas, one of whom was PW 2, that he was willing to show the axe used for the crime which he had concealed. In pursuance of the said statement, the accused discovered the axe which was hidden in a bamboo bush. Excluding the inadmissible portion "axe used for the assault " the discovery of the axe is admissible. The medical evidence shows incised wounds which could be caused by the axe discovered. The statement made by the accused no.1 in pursuance of which discovery was made is produced at Exhibit 35 and the panchanama is produced at Exhibit 16. They are proved by PW 2. In our view, the ocular evidence of PW 4 and PW 5 that the accused assaulted and gave axe blows to the deceased with an axe is the discovery of the axe by the accused no.1 as also by the statement of the deceased

recorded soon after the incident and which is regarded as the complaint/first information report.

10. In the light of this evidence produced on record we are satisfied that the prosecution has proved beyond reasonable doubt culpability of accused no.1 for the crime of murder of the deceased. However, the accused nos. 2 and 3 are entitled to benefit of reasonable doubt. Undoubtedly, Kamal Landage (PW 4) in her deposition has stated that accused nos. 2 and 3 pulled down the deceased on the ground and thereafter the accused no. 1 gave axe blows. However, the other eye witnesses Rupali Nangare (PW 5) has not even mentioned about the presence of accused nos. 2 and 3 in her deposition. The prosecution has further failed to prove any common intention between the accused nos. 1,2 and 3. According to the prosecution the accused no.1 had beaten the daughter of the deceased in the morning of 14th May, 2000 when the deceased was away in the village. On his return, the deceased came to know about the beating and went to ask for an explanation from the accused no.1. It is the further case of the prosecution that there was a quarrel between the accused no.1 and the deceased

at that time. If so there could be no pre-meditation between the accused nos. 1,2 and 3 to assault and kill the deceased. What appears to have happened is on the spur of the moment when the deceased asked for an explanation from the accused no.1. Nobody has deposed about there being any plan of accused nos. 1,2 and 3 to kill the deceased nor can common intention to kill the deceased be inferred and attributed to the accused nos. 2 and 3 on the evidence on record. There is no evidence to hold accused nos. 2 and 3 shared any common intention with the accused no.1 to assault and kill the deceased. In the circumstances, we are of the view that the accused nos. 2 and 3 are entitled to benefit of reasonable doubt.

11. The accused were charged under section 326 of the Indian Penal Code for grievous hurt to Kamal Landage (PW 4). The Sessions Judge held that there is no satisfactory evidence that Kamal sustained grievous hurt. Doctor was not examined to prove that grievous injury was caused to Kamal Landage (PW 4) in the scuffle which took place between the parties. In fact there is no conclusive evidence that any injury caused to Kamal. In the

circumstances, it is not proved that the accused caused hurt to Kamal.

12. For these reasons, we set aside the conviction and sentence of accused nos. 2 and 3. They are on bail. Their bail bond stands discharged. We also set aside the conviction and sentence of the accused no.1 under section 323 read with section 34 of the Indian Penal Code. We however convict the accused no. 1 under section 302 of the Indian Penal Code for causing death of Vilas Landage and sentence him for imprisonment for life and fine of Rs.2000/- and in default of payment of fine further R.I. for one month.

(SMT.RANJANA DESAI, J)

(D.G.KARNIK, J)

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